

**SAN JOAQUIN TRIBUTARY AGENCIES**

*Merced Irrigation District  
Modesto Irrigation District  
Oakdale Irrigation District  
South San Joaquin Irrigation District  
Turlock Irrigation District*

257

February 23, 1995

Mr. John Caffrey, Chairman  
State Water Resources Control Board  
901 P Street  
P. O. Box 100  
Sacramento CA 95812-0100

**RE: Comments of the San Joaquin Tributary Agencies on the Draft Water Quality Control Plan and Environmental Report for the San Francisco Bay/Sacramento—San Joaquin Delta Estuary**

Dear Mr. Caffrey:

These comments on the Draft Water Quality Control Plan ("Draft Plan") and Environmental Report Appendix for the San Francisco Bay/Sacramento—San Joaquin Delta Estuary are submitted on behalf of the San Joaquin Tributary Agencies ("SJTA"). The SJTA consists of the Merced, Modesto, Oakdale, South San Joaquin and Turlock Irrigation Districts. We will be submitting our detailed comments on the Draft Plan and Environmental Report prior to March 10.

We are in general agreement with the State Board's comments regarding California water rights. California has established a water right system which allows for the orderly allocation and use of its water supply through a system based on riparian and appropriative rights. Also, as pointed out in the Environmental Report, the watershed protection and area of origin statutes accord first priority to water rights for use within the watershed. The CVP and SWP water rights are subject to these provisions, and diversions for export by these projects are restricted until the needs in the watershed, including protections for beneficial uses in the Bay—Delta estuary, are met.

At the outset we would like to point out that contrary to assertions made in the Draft Plan and the accompanying Environmental Report, the CUWA/Ag proposal did not represent a consensus by all of agriculture. The open and public process that Betsy Riecke spoke of during her address at the December 1994 ACWA conference in Monterey was certainly not evident in those last few days prior to the state-federal announcement.

The water supply impacts to upstream areas identified in the Environmental Report apparently apply only to those agencies on the eastside of the San Joaquin Valley. No water supply impacts are reported for other San Joaquin River water users. The water supply impacts are the direct result of increased flows at Vernalis during the

February through June period and later in the fall. At the same time, exports are allowed to continue during these same periods that are the most critical to migrating chinook salmon and other aquatic species. This represents a tremendous benefit to the state and federal export projects at the expense of the non-project upstream water users.

The burden of dealing with project-created impacts cannot be transferred to other entities. Both the CVP and the SWP were conceived and authorized on the concept that water surplus to the needs of upstream users in the Sacramento and San Joaquin valleys, in-Delta uses, and presumably public trust uses could be transferred to water deficient areas. In addition both projects were given certain responsibilities for Delta water quality. The County of Origin and Watershed Protection laws were adopted to ensure that only surplus water was exported from areas of origin. These statutes are meant to protect upstream users from water supply impacts created by the projects. To the extent that mitigation of project impacts on Delta public trust values requires additional water to flow into the Delta, it would not only be grossly unfair but a violation of the intent of the County of Origin and Watershed Protection laws to require upstream, non-project water right holders to provide such mitigation flows. The projects alone must be held responsible for flows necessary to permit export pumping, whether those flows are operational carriage water (as traditionally defined) or additional flows to offset and mitigate project impacts.

In addition, we feel that the impact analysis prepared for the Environmental Report makes a significant error in that it incorrectly assumes if there is insufficient water from the CVP's entitlement in New Melones to meet all of the Vernalis requirements, additional water is supplied from the San Joaquin River upstream of the Stanislaus River. Such a premise not only ignores California waters right law, but it fails to adequately assess the impacts of the preferred alternative. To the extent that the USBR is unable to provide the required Vernalis flows, allocation of responsibility must be based on the priority system.

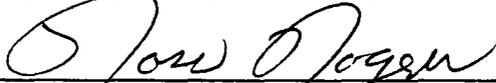
The Draft Plan itself covers only a three year period. During the three year period, the USBR is required to meet the San Joaquin River flow objectives, in accordance with the biological opinion for Delta smelt. The flows provided by the USBR are described as interim flows and will be reevaluated as to timing and magnitude within the next three years. The SWRCB is not even considering allocation of flows at this time — the allocation process will be the subject of a water right proceeding which is scheduled to commence following the adoption of the Draft Plan. At that time, the State Board has stated it will allocate responsibility for meeting the San Joaquin River flow objectives among the water right holders in the watershed, after considering the water right priority system, watershed protection and area of origin laws, and decisions by the Federal Energy Regulatory Commission and other regulatory agencies. Consequently, the impacts described in the Environmental Report should only be limited to those areas

Mr. John Caffrey  
February 23, 1995  
Page 3

dependent upon flows provided by USBR's entitlement from New Melones. The proper time to evaluate the impacts of any proposed allocation scheme is during the water right phase. In addition, CEQA requires that the State Board to prepare an environmental impact report before issuing any order reallocating water to benefit public trust resources in the Bay-Delta estuary.

Sincerely,

MERCED IRRIGATION DISTRICT

  
\_\_\_\_\_  
Ross Rogers, General Manager

MODESTO IRRIGATION DISTRICT

  
\_\_\_\_\_  
Allen Short, General Manager

OAKDALE IRRIGATION DISTRICT

  
\_\_\_\_\_  
Barrett Kehl, General Manager

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

  
\_\_\_\_\_  
Rick Martin, General Manager

TURLOCK IRRIGATION DISTRICT

  
\_\_\_\_\_  
Paul D. Elias, General Manager